IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 784 OF 1999

IN

WRIT PETITION NO. 1524 OF 1992

Mrs. Pramila N. Kutti)
203, Ruby Apartment, Holy Cross Street,)
I.C. Colony, Borivli (West),)
Mumbai-400 103.) .. Appellant

V/s

1. Akbar Peerbhoy College of Commerce &)
Economics, Maulana Shaukatali Road,)
Mumbai-400 008.)

2. The Principal,)
Akbar Peerbhoy College of Commerce &)
Economics, Maulana Shaukatali Road,)
Mumbai-400 008.)

3. The State of Maharashtra)
through the Dy. Director of Education
Greater Mumbai.) .. Respondents

Mr.M.P. Vashi with Mr.Santosh Shetty i/b M.P. Vashi & Associates for the Appellant.

Mr.A.N. Maniyar for Respondent No.1.

Mr.P.G. Sawant, A.G.P. for Respondent No.3.

CORAM : R.M.S. KHANDEPARKAR &
D.G. KARNIK, JJ.

DATE : 20TH APRIL 2007

ORAL JUDGMENT: (Per D.G. Karnik, J.)

1. This appeal is directed against the judgment and

order dated 11th June 1999 passed by a learned Single Judge of this Court allowing the writ petition filed by the Respondents No.1 and 2.

2. The Respondents No.1 and 2 are running a Junior College of Commerce & Economics which is affiliated to the University of Bombay. The Appellant was appointed pursuant to her application as a teacher of English in the Junior Section of the College of the 1st Respondent on a basic salary of Rs.500/- with effect from 27th July 1981. The appointment order stated that her appointment was temporary and for the current academic year only and would terminate automatically on the last working day of the year, i.e. 20th April 1982.

3. It appears that thereafter the appointment of the Appellant was renewed continuously from year to year as a full time teacher of English except for one occasion when she was appointed on a part time basis in the year 1983-84. The last appointment of the Appellant was made by a letter dated 22nd June 1989 which stated that her appointment was purely temporary for a period of one year from 6th June 1989 to 20th April 1990. The letter thereafter stated that after the expiry of the aforesaid period, her services shall stand terminated without notice. A day prior to the date of termination

indicated in the letter of appointment itself, i.e. on 19th April 1990, the Respondent No.1 informed the Appellant that her services would stand terminated with effect from 21st April 1990. Aggrieved by that communication, the Appellant filed an appeal before the School Tribunal challenging the termination as illegal and contrary to the Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 [for short "the Act"]. By an order dated 31st March 1992, the School Tribunal allowed the appeal and held that the impugned notice of termination dated 19th April 1990 was illegal. The School Tribunal accordingly set aside the said notice and directed the Respondents No.1 and 2 to reinstate the Appellant into service. The Respondents No.1 and 2 challenged the order of the School Tribunal by filing a Writ Petition bearing No.1524 of 1992. By the impugned judgment dated 11th June 1997, a learned Single Judge allowed the writ petition and set aside the order of the School Tribunal ordering reinstatement of the Appellant. Being aggrieved by the said order, the Appellant filed the present appeal.

4. It is an admitted position that under the Maharashtra Employees of Private Schools Rules, 1981 [for short "the Rules], the qualification for

appointment of a Lecturer in a Junior College is a Masters Degree in Second Class, i.e. with minimum 45% marks. Admittedly, the Appellant does not possess the said qualification inasmuch as though she has a Masters Degree, she has passed the same in Pass Class securing less than 45% marks. The case of the Respondents No.1 and 2 is that despite advertisement each year, they were not in a position to get a teacher possessing a Masters Degree with a 2nd Class and, therefore, the Appellant was first appointed in the year 1981 purely on a temporary basis for one year till the Respondents No.1 and 2 could find a qualified teacher. Every year, a fresh appointment was made temporarily only because a qualified teacher was not available. Even in the year 1989, an advertisement was issued. The Appellant made a fresh application on 24th April 1989 and as no eligible teacher was available in that year also, a letter of appointment was issued to the Appellant on 22nd June 1989 appointing her purely on a temporary basis for that academic year. The letter clearly stated that the appointment was purely temporary for one academic year from 6th June 1989 to 20th April 1990.

5. Mr.Vashi for the Appellant submitted that the Appellant could not have been appointed as a temporary teacher because the post was a permanent one and no

temporary appointment could be made to a permanent post. He further submitted that the Rules contemplated temporary appointment only in two cases, namely (i) when a permanent teacher was on leave or deputation, and (ii) when the post was a reserved post and the person from the reserved category was not available. He, therefore, submitted that in the present case, since both the contingencies did not exist, the Respondents No.1 and 2 could not appoint the Appellant as a temporary teacher and the Appellant's appointment must be treated as a permanent teacher.

6. As regards the first contention, it is true that when there is a permanent vacancy, a person cannot normally be appointed temporarily to fill up the permanent vacancy. However, there can be exceptions to this rule. Where a statute or rule prescribes a qualification for appointment to a permanent post, no person who does not hold the qualification can be appointed to that post. In such a situation, if exigencies require, a person with lesser qualifications may be appointed purely on a temporary basis till a qualified person is available or till the exigency requires, whichever expires earlier. In the present case, though the post was permanent, there was no qualified employee available. As there was no person

available having required qualification necessary for the appointment and the post could not be kept open as the college required a teacher, temporary appointment of a qualified teacher had to be made. In the facts and circumstances of the case, it was necessary to make the temporary appointment as no qualified teacher was available.

7. As regards the second contention, it would be useful to refer to Rule 10 of the Rules.

> "10. Categories of employees:
>
> (1) Employees shall be permanent or non-permanent. Non-permanent employees may either be temporary or on probation.
>
> (2) A temporary employee is one who is appointed to a temporary vacancy for a fixed period."

Aforesaid Rule contemplates permanent and non-permanent employees as well as a temporary employee. Temporary appointment can be made in multiple situations such as: in place of a person on leave or where the post is reserved and the reserved category employee is not available and so on. Now, just as an appointment can be made on a temporary basis where the post is reserved and

the person belonging to the reserved category is not available, similarly where the post requires particular qualification and the person with that qualification is not available, a temporary appointment can be made till the exigency exists or till a qualified person is available. The letter of the Education Officer granting approval for the appointment of the Appellant for the year 1987-88 is eloquent. The letter clearly states that the approval was only for the period 20th June 1987 to 20th April 1988. The letter further stated that if the Appellant wished to continue her career as a teacher, she would have to improve her qualification (by appearing again for Masters Examination and obtaining minimum 45% marks therein). The Appellant accepted the appointment knowing full well that she was not qualified and her appointment was purely temporary till a qualified person was available and unless she improved her qualification, it was not possible to continue her. We, therefore, have no hesitation in holding that the Appellant was not appointed as a permanent employee, but was appointed on a purely temporary basis and that too for a contractual period of one academic year every time.

8. Mr.Vashi submitted that the Appellant was a permanent employee and, therefore, her services could

not have been terminated. We have already held that the Appellant was not a permanent employee, but was a temporary employee, her appointment was for a contractual period and that her last appointment was only for the period from 10th June 1989 to 20th April 1990. The appointment of the Appellant stood automatically terminated on 20th April 1990. The letter written by the Respondents No.1 and 2 dated 19th April 1990 was not a letter of termination, but a letter of intimation reminding her that appointment would stand terminated from 21st April 1990 and that her services were no longer required. It may be mentioned here that for the next academic year, i.e. 1990-91, a qualified teacher was available and has been appointed by the Respondents No.1 and 2.

9. In the circumstances, we see no reason to interfere in the order passed by the learned Single Judge. The Appeal is accordingly dismissed with no order as to costs.

(R.M.S. KHANDEPARKAR, J.)

(D.G. KARNIK, J.)